

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MOTOWN RECORD COMPANY, L.P., a	:	
California limited partnership; CAPITOL	:	
RECORDS, INC., a Delaware corporation;	:	
ATLANTIC RECORDING	:	CIVIL ACTION
CORPORATION, a Delaware corporation;	:	
UMG RECORDING, INC., a Delaware	:	NO. 04-CV-2246
corporation; WARNER BROS. RECORDS	:	
INC., a Delaware corporation; and SONY	:	
MUSIC ENTERTAINMENT INC., a	:	
Delaware corporation,	:	
	:	
Plaintiffs,	:	
v.	:	
	:	
THERESA DePIETRO,	:	
	:	
Defendant.	:	

MOTION TO COMPEL

I. INTRODUCTION

This is a copyright action wherein Plaintiffs seek redress for infringement of copyrighted sound recordings, pursuant to the Copyright Act of 1976, 17 U.S.C. § 101 et seq.¹ To search for evidence and narrow the issues, Plaintiffs have propounded discovery that complies with the Federal Rules of Civil Procedure. Defendant, without legal excuse, has ignored and thwarted Plaintiffs' discovery efforts. Plaintiffs obtained an Order from this Court

¹ Plaintiffs are recording companies that own or control exclusive rights to copyrights in sound recordings, including the rights at issue in this case: (1) Plaintiffs' exclusive right to reproduce certain of their copyrighted sound recordings; and (2) Plaintiffs' exclusive right to distribute the copyrighted sound recordings. On information and belief, Defendant, without Plaintiffs' permission or consent, used an online media distribution system to download, distribute, and make available Plaintiffs' Copyrighted Recordings. Doc. 1. This is copyright infringement. *See In re Aimster Copyright Litig.*, 334 F.3d 643, 645 (7th Cir. 2003), cert. denied, 124 S. Ct. 1069 (2004) (holding that the individuals that make and transmit digital copies of copyrighted music files over the internet are direct copyright infringers); *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1014 (9th Cir. 2001), *aff'd*, 284 F.3d 1091. Plaintiffs are entitled to an injunction, statutory damages, attorneys' fees and costs pursuant to 17 U.S.C. §§ 504(c) & 505.

compelling Defendant's compliance, but Defendant still refuses. In addition, Defendant prematurely terminated her deposition less than fifty-five minutes after it began. Plaintiffs return again to this Court, reluctantly seeking another Order to compel discovery.

A. Governing Standards

Pursuant to Federal Rule of Civil Procedure 26(b), Plaintiffs are entitled to "obtain discovery regarding *any matter*, not privileged, *that is relevant* to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity, and location of persons having knowledge of any discoverable matter." Fed. R. Civ. P. 26(b) (emphasis added). Relevancy is broadly construed. *See, e.g., Hicks v. Big Bros./Big Sisters of America*, 168 F.R.D. 528, 529 (E.D. Pa. 1996); *Ft. Washington Res., Inc. v. Tannen*, 153 F.R.D. 78, 79 (1994). "Relevant matter encompasses any matter that bears on, or that . . . could bear on any issue that is or may be in the case." *Tannen*, 153 F.R.D. at 79 (internal quotation and citation omitted).

B. Factual And Procedural History

1. Case Overview

Plaintiffs filed this action against Defendant on May 24, 2004. Doc. 1. In it, Plaintiffs alleged that Defendant unlawfully downloaded and distributed certain recordings that were protected under federal copyright laws. Doc. 1, ¶¶ 12-15. Defendant was served with this action on July 26, 2004. Doc. 5.

2. Plaintiffs' Written Discovery Requests And Defendant's Failure To Comply With This Court's Order

Plaintiffs served Defendant with discovery requests on January 4, 2005. Specifically, Plaintiffs, relying on Federal Rules of Civil Procedure 33, 34, and 36, submitted

Interrogatories, Request for Admission, and Request for Production (collectively "Written Discovery"). (A copy of each is attached hereto as Exhibits 1, 2, and 3).

Defendant purported to respond on February 7, 2005. Specifically, Defendant provided one-sentence responses that "den[ied]" all Written Discovery. (A copy of each is attached hereto as Exhibits 4, 5, and 6). Plaintiffs wrote a letter to Defendant requesting that she address her inadequate responses to the Written Discovery. (A copy of the February 16, 2005 letter is attached as Exhibit 7). Defendant did not respond or otherwise supplement her initial "responses." Plaintiffs moved to compel Defendant to provide adequate responses to the Written Discovery. Doc. 13. Defendant did not respond to Plaintiffs' Motion.

This Court granted Plaintiffs' Motion to Compel on April 1, 2005. Specifically, this Court ordered Defendant to:

produce documents responsive to Plaintiffs' First Request for Production of Documents Directed to Defendant, serve full and complete answers to Plaintiffs' Interrogatories Directed to Defendant, and serve full and complete responses to Plaintiffs' First Requests for Admission Directed to Defendant within 10 days hereof, or risk the imposition of sanctions.

Doc. 17.

Defendant failed to comply with either the letter or spirit of this Court's Order. In one-sentence pleadings, Defendant, baldly invoking the Fifth Amendment, refused to admit or deny the Requests for Admission and refused to respond to the Interrogatories. (A copy of both pleadings are attached as Exhibits 8 and 9). Additionally, Defendant suggested she had "no existing documents" that were responsive to Plaintiffs' Requests for Production. (A copy of this pleading is attached as Exhibit 10).

3. Defendant's Refusal To Participate In Her Deposition

Plaintiffs then noticed Defendant's deposition. (A copy of this Notice is attached as Exhibit 11). Defendant appeared for her deposition, again baldly asserted the Fifth

Amendment privilege to any and all questions, and terminated the deposition by literally walking out of the door after approximately fifty-five minutes. *See* T. DePietro Depo., 26:10-32:19 (A copy of the deposition is attached as Exhibit 12).

Since walking out of her deposition, Defendant has refused to provide any discovery in this matter. Recently, on July 11, 2005, Plaintiffs sent Defendant a letter requesting that she correct her discovery violations. (A copy of the July 11, 2005 letter is attached as Exhibit 13). Defendant has not responded. Accordingly, Plaintiffs respectfully request that this Court grant their Second Motion to Compel and order all further and appropriate relief.

II. ANALYSIS

This Motion addresses two significant discovery abuses. First, Defendant has refused, despite a direct Order from this Court, to provide meaningful responses to Written Discovery. Second, Defendant improperly terminated a proper deposition while questions were pending. Plaintiffs request that this Court compel Defendant to respond to the pending discovery requests, re-submit to a deposition, and grant appropriate discovery sanctions for Defendant's flagrant disregard of discovery.

A. Defendant's Unsupported Assertion Of The Fifth Amendment Privilege Cannot Be Condoned

1. This Court Should Compel Defendant To Respond To Plaintiffs' Legitimate Discovery Inquiries

Plaintiffs have attempted to employ legitimate discovery devices to obtain evidence necessary to prosecute their case. Defendant has exhibited a flagrant pattern of contemptuous behavior, including her blanket assertion of the Fifth Amendment privilege against self-incrimination on all types of discovery. As demonstrated below, she has no justifiable basis to assert this privilege. Even if this Court were to conclude otherwise, this Court should impose an adverse inference and preclude Defendant from offering contrary evidence.

a. The Fifth Amendment Only Applies When There Is A Reasonable Basis To Fear Incrimination

The Fifth Amendment's legitimate protections (invariably) lead to abuse. *See Pelullo v. Schwartz (In re Pelullo)*, No. 98-5526, 1999 WL 142380, at *10 (E.D. Pa. Mar. 16, 1999). Accordingly, courts do not accept bald assertions of privilege: "the privilege's protection extends only to witnesses who have 'reasonable cause to apprehend danger from a direct answer.'" *Reiner*, 532 U.S. at 21.

Whether the privilege extends to a particular question or discovery request is a question for the Court. *See Reiner*, 532 U.S. at 21; *Environmental Tectonics v. W.S. Kirkpatrick, Inc.*, 847 F.2d 1052, 1065 (3d Cir. 1988). The Court must analyze the specific question – considering the implications of the question and the setting in which the question is posed – to determine whether a responsive answer or an explanation of why it cannot be answered might pose a real and significant threat of prosecution. *See Hoffman v. United States*, 341 U.S. 479, 486-87 (1951)

A witness' mere assertion or invocation of the privilege does not establish that the privilege applies. Subjective apprehension of an incriminating risk is inconsequential; the apprehension must be real and reasonable as shown by the objective facts. *See United States v. Lee*, 315 F.3d 206, 213 (3d Cir. 2003); *see also Environmental Tectonics*, 847 F.2d at 1065 (recognizing the privilege protects against real dangers, not remote and speculative possibilities); *New York City Shoes v. Best Shoe Corp.*, 106 B.R. 58, 61 (Bankr. E.D. Pa. 1989) (recognizing the privilege may only be invoked where the witness has "reasonable cause" to fear self-incrimination). If the risk of incrimination is not reasonable, the privilege does not apply and the witness must respond. *See Hoffman*, 341 U.S. at 486

b. Defendant Is Mistaken As To The Applicability Of The Fifth Amendment

(1) The Fifth Amendment Does Not Apply To Plaintiffs' Deposition Questions

Plaintiffs sought to depose Defendant about the circumstances surrounding this litigation, search for evidence to either refute or support their claims, and narrow the issues. Defendant appeared at the properly noticed deposition, but, after less than fifty-five minutes, unilaterally terminated the deposition by leaving the premises. The crux of Defendant's decision to terminate the deposition was her blanket assertion of her Fifth Amendment privilege. *See* Ex. 12, T. DePietro Depo., p. 26:5-17.

Defendant's invocation of the Fifth Amendment privilege at her deposition was unreasonable. After identifying her brother, sister-in-law, and then-boyfriend as persons with access to her home and computer, Defendant refused to identify any additional friends or family or answer any additional questions about these individuals that she had already selectively identified. *See* Ex. 12, T. DePietro Depo., p. 26:5-13. She then stated that she would answer no additional questions – irrespective of what they were – due to her understanding of the Fifth Amendment. *See* Ex. 12, T. DePietro Depo., p. 26:14-17 (“Q: You’re going to assert the Fifth -
- A: For every question you’ve got from now on out.”). In an effort to make a record, counsel for Plaintiffs attempted to identify the nature of Defendant's objection, but Defendant simply said “I’m done.” *See* Ex. 12, T. DePietro Depo., p. 26:23. Moreover, Plaintiffs' counsel attempted to make a record of her assertion with regard to the remaining questions, but Defendant sat silent for several minutes and then chose to walk out of the deposition. *See* Ex. 12, T. DePietro Depo., p. 27:5 – 31:7.

The facts and circumstances surrounding Defendant's deposition demonstrate that her blanket invocation of the Fifth Amendment was unreasonable. First, identifying Defendant's

friends and family with access to her home cannot reasonably subject *Defendant* to criminal liability. *See, e.g., Couch v. United States*, 409 U.S. 322, 330 (1976) (recognizing the Fifth Amendment privilege is personal in nature). Second, her blanket assertion of the privilege is improper. *See, e.g., Pelullo v. Schwartz (In re Pelullo)*, No. 98-5526, 1999 WL 142380, at *10 (E.D. Pa. Mar. 16, 1999) (recognizing that the “blanket assertion of [debtor’s] Fifth Amendment privilege in refusing to respond to all of Defendant’s discovery requests is an abuse of the privilege, especially in view of the fact that he is required to give specific answers to specific questions”). Even if the privilege would apply to *some* of Plaintiffs’ questions, this does not “absolve [Defendant] of [her] responsibility for [her] repeated failure to respond to most of [Plaintiffs’] discovery requests.” *Pelullo*, 1999 WL 142380, at *10. Third, Defendant, by selectively answering questions relating to her family and friends, waived her right to assert the privilege. *See, e.g., Mitchell v. United States*, 526 U.S. 314, 321 (1999) (recognizing the right can be waived).

(2) *The Fifth Amendment Does Not Apply To Plaintiffs’ Interrogatories*

Plaintiffs served twenty distinct Interrogatories upon Defendant. *See* Ex. 1. Defendant, in a one-sentence response, suggests she is not obliged to answer any of these requests because of the Fifth Amendment privilege. *See* Ex. 9. A simple examination of the Requests illustrates her blanket invocation is unsupportable. The Interrogatories seek specific information to specific issues. For instance, Plaintiffs ask Defendant to identify her date of birth, the basis for each affirmative defense identified in her Answer, and the identity of all persons who downloaded on online media distribution system onto her computer (which is not unlawful). *See* Ex. 1, Nos. 1, 6, and 20.

An answer to any of these questions would not reasonably subject Defendant to criminal prosecution. Defendant's blanket assertion of privilege is therefore inappropriate. *See Environmental Tectonics*, 847 F.2d at 1065; *see also Pelullo* 1999 WL 142380, at *10 (E.D. Pa. Mar. 16, 1999). Even if the privilege would apply to *some* of Plaintiffs' Interrogatories, it would not "absolve [Defendant] of [her] responsibility for [her] repeated failure to respond to most of [Plaintiffs'] discovery requests." *Pelullo*, 1999 WL 142380, at *10.

(3) *The Fifth Amendment Does Not Apply To Plaintiffs' Request For Admission*

Plaintiffs also served twenty-eight distinct Requests for Admission upon Defendant. *See* Ex. 2. Defendant, in a one-sentence response, suggests she is not obliged to answer *any* of these requests because of her Fifth Amendment privilege. *See* Ex. 8. This blanket response is untenable.

As with Plaintiffs' other discovery, the Requests for Admission seek information to narrow the factual issues in this case. For example, the Requests ask Defendant to admit or deny that, *inter alia*, she subscribed to the Internet service provider RCN Corporation, she owned her computer, she downloaded an online media distribution system onto her computer (which is not unlawful), and certain Plaintiffs own certain copyrights. *See* Ex. 2, Nos. 1, 2, 5, 14, and 25. A response to any of these Requests would not reasonably subject Defendant to criminal prosecution. Defendant's blanket assertion of privilege is therefore inappropriate. *See Environmental Tectonics*, 847 F.2d at 1065; *Pelullo*, 1999 WL 142380, at *10. Even if the privilege would apply to *some* of Plaintiffs' Requests for Admission, this would not absolve Defendant for her repeated failure to respond to most of Plaintiffs' Requests. *Pelullo*, 1999 WL 142380, at *10.

2. Even If The Fifth Amendment Privilege Applies To Some Of The Discovery Issues, This Court Should Impose Sanctions Commensurate With The Resulting Prejudice To Plaintiffs

The Supreme Court, in *Baxter v. Palmigiana*, 425 U.S. 308 (1976), recognized that use of the Fifth Amendment had consequences. First, if the First Amendment applied to some of the issues in this case, an adverse inference is appropriate. In *Baxter*, the U.S. Supreme Court recognized that an adverse inference may arise against the invoking party that refuses to testify. *See Baxter*, 425 U.S. at 320; *see also S.E.C. v. Graystone Nash, Inc.*, 25 F.3d 187, 191 (3d Cir. 1994). As explained above, each such use of the privilege should be separately examined by this Court. *See Pelullo*, 1999 WL 142380, at *10.

Second, it is also appropriate to preclude the invoking party from using the privilege as a shield in discovery and then, by surprise, waiving the privilege to defend against the claims at a later time. *See, e.g., Graystone Nash, Inc.*, 25 F.3d at 191 (citing, with approval, decisions that precluded a party from opposing summary judgment motions with affidavits after a refusal to answer questions in a deposition). This also requires issue by issue examination. Even if the privilege applies to one or more questions or requests in this litigation, this Court should nonetheless preclude Defendant from offering any evidence that is at the heart of the discovery requests Defendant is attempting to avoid. For example, if Defendant chooses not to respond to a question about whether she downloaded certain recordings, she should be precluded from providing evidence or testimony *opposing* Plaintiffs' evidence. Unlike in *Graystone Nash*, Defendant has refused to provide answers to Written Discovery (which addresses the underlying facts, relevant documents, and her defenses) and deposition questions. *See Graystone Nash*, 25 F.3d at 192 (concluding courts must balance the interests of the parties). Her stonewalling precludes Plaintiffs from obtaining the identity of other witnesses or other avenues of discovery. Accordingly, Defendant should be precluded from offering competing evidence. *See Graystone*

Nash, Inc., 25 F.3d at 191 (recognizing the “dilemma of choosing between complete silence and presenting a defense does not fatally infect the right against compelled self-incrimination”).

B. Defendant Has Willfully Refused To Produce Documents As Required By This Court’s April 1, 2005 Discovery Order

In addition to improperly invoking the Fifth Amendment, Defendant has also continued to ignore Plaintiffs’ requests and this Court’s Order to produce documents. Plaintiffs served seventeen distinct Requests for Production upon Defendant and this Court ordered Defendant to respond appropriately. *See* Ex. 3 and Doc. 17. Defendant, in a one-sentence response, stated “[o]ther than the documents that have been sent to the Defendant by the Plaintiff [sic] or the Plaintiffs [sic] representatives, there are no existing documents that the Plaintiffs are requesting.” *See* Ex. 10.

Defendant’s response is demonstrably false and unresponsive. First, it is entirely irrelevant whether Plaintiffs have, through other means, obtained some of the documents it seeks from Defendant. This Court, in *Ft. Washington Resources, Inc. v. Tannen*, 153 F.R.D. 78, 79 (E.D. Pa. 1994), recognized that “it is not a bar to the discovery of relevant material that the same material may be in the possession of the requesting party or obtainable from another source.” Second, Defendant’s suggestion that she has no additional documents is untrue. One of the requests, for example, asks Defendant to produce a copy of a particular “screenshot” from her computer’s desktop. *See* Ex. 3 and Doc. 17. Plaintiffs do not have and have never had this information; it is solely within the possession, custody, and control of Defendant. She therefore has an obligation under the Federal Rules of Civil Procedure and this Court’s April 1, 2005 Order to produce all information requested. *See* Fed. R. Civ. P. 34(b).

C. This Court Should Order Full Compliance With Plaintiffs’ Discovery Responses And Impose Sanctions For Defendant’s Behavior

The Federal Rules of Civil Procedure permit sanctions when a party refuses to

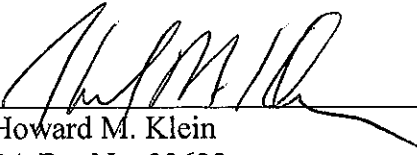
meaningfully participate in discovery. *See, e.g., Celmer v. Marriot Corp.*, No. 03-CV-5229, 2004 WL 1822763, at *1 (E.D. Pa. July 15, 2004) (relying on Fed. R. Civ. P. 37). Rule 37 identifies a range of penalties to be imposed for a party's dilatory discovery abuses. With regard to Defendant's failure to meaningfully respond to the Written Discovery, Plaintiffs are, subject to the Court's discretion, willing to accept meaningful responses to existing discovery (in lieu of monetary sanctions) and/or other non-monetary penalties. Defendant's behavior at the deposition, however, required the expenditure of time and money. Plaintiffs therefore respectfully request that this Court order Defendant to re-submit to a deposition, provide responsive answers to questions at the deposition, and pay Plaintiffs' attorney fees and costs (which will be provided at the conclusion of the hearing on this matter) associated with seeking relief. *See Johnson v. Wayne Manor Apartments*, 152 F.R.D. 56, 58 (E.D. Pa. 1993); *Blue Grass Steel, Inc. v. Miller Bldg. Corp.*, 162 F.R.D. 493, 495 (E.D. Pa. 1995); *cf. also Stone v. Jefferson Hosp.*, 164 F.R.D. 37, 38 (E.D. Pa. 1995) (dismissing a *pro se* litigant's claims because of discovery abuses, including the failure to respond to discovery requests and failure to appear for a deposition).

III. CONCLUSION

Plaintiffs' rights, as established by federal law, have been violated by Defendant. In addition to violating federal copyright laws, Defendant's discovery tactics have also run afoul of the Federal Rules of Civil Procedure. Neither violation can be condoned. Accordingly, Plaintiffs respectfully request that this Court order Defendant to comply with her discovery obligations and award sanctions as may be necessary to compensate Plaintiffs and deter Defendant's future conduct.

Respectfully submitted

Dated: July 19, 2005



Howard M. Klein
PA Bar No. 33632
Geoffrey L. Beauchamp
PA Bar No. 40380
CONRAD O'BRIEN GELLMAN & ROHN, P.C.
1515 Market Street, 16th Floor
Philadelphia, PA 19102-1916

Attorneys for Plaintiffs Motown Record Company,
L.P., Maverick Recording Co., Priority Records
LLC, SONY BMG MUSIC ENTERTAINMENT,
Atlantic Recording Corporation, Arista Records
LLC, UMG Recordings, Inc., Virgin Records
America, Inc., Warner Bros. Records Inc. and BMG
Music

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MOTOWN RECORD COMPANY, L.P., a	:	
California limited partnership; CAPITOL	:	
RECORDS, INC., a Delaware corporation;	:	
ATLANTIC RECORDING	:	CIVIL ACTION
CORPORATION, a Delaware corporation;	:	
UMG RECORDING, INC., a Delaware	:	NO. 04-CV-2246
corporation; WARNER BROS. RECORDS	:	
INC., a Delaware corporation; and SONY	:	
MUSIC ENTERTAINMENT INC., a	:	
Delaware corporation,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
THERESA DePIETRO,	:	
	:	
Defendant.	:	

PLAINTIFFS' INTERROGATORIES DIRECTED TO DEFENDANT

Pursuant to Federal Rule of Civil Procedure 33, please answer each of the following interrogatories, separately and fully, in writing, under oath, within thirty (30) days after service, in accordance with the Definitions and Instructions below.

DEFINITIONS AND INSTRUCTIONS

- A. "YOUR COMPUTER" means all computers and computer components within your possession, custody, or control that had access to the Internet at any time during the preceding three years, including but not limited to, through your account with RCN Corporation.
- B. "PLAINTIFFS' RECORDINGS" means the sound recordings listed in Exhibit A attached to the Complaint in this action.
- C. "ONLINE MEDIA DISTRIBUTION SYSTEM" means any Internet-based system including, but not limited to, Kazaa, Grokster, MusicCity, BearShare, Limewire, iMesh,

FastTrack, and Gnutella that enables users to copy sound recordings from, and/or distribute sound recordings to, other users of the system.

D. "PERSON(S)" means any natural person and any business, legal, or governmental entity or association.

E. "IDENTIFY" (with respect to persons) means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, their relationship to you and their present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

F. "STATE THE BASIS" means you shall:

1. identify each and every document (and, where pertinent, the section, article, or subparagraph thereof), which forms any part of the source of your information regarding the alleged facts or legal conclusions referred to by the interrogatory;

2. identify each and every communication which forms any part of the source of your information regarding the alleged facts or legal conclusions referred to by the interrogatory;

3. state separately the acts or omissions to act on the part of any person (identifying the acts or omissions to act by stating their nature, time, and place and identifying the person involved) which form any part of your information regarding the alleged facts or legal conclusions referred to in the interrogatory; and

4. state separately any other fact which forms the basis of your information regarding the alleged facts or legal conclusions referred to in the interrogatory.

G. "MADE AVAILABLE" or "MAKE AVAILABLE" means storing a file or content on the hard drive of YOUR COMPUTER in a manner such that the file or content may be accessed by members of the public and/or other users of an ONLINE MEDIA DISTRIBUTION SYSTEM, including, but not limited to, by placing the file or content in a "share" folder associated with an ONLINE MEDIA DISTRIBUTION SYSTEM.

H. These interrogatories call for all information (including any information contained in or on any document, electronic, or hard-copy) that is known or available to you, including all information in the possession of or available to your attorneys, agents, representatives, investigators or any other person acting on behalf of you or under your direction or control.

1. If you cannot answer any interrogatory fully and completely after exercising due diligence to make inquiry and secure the information necessary to do so, please answer each such interrogatory to the fullest extent possible, state the facts upon which you rely to support your contention that you are unable to answer the interrogatory fully and completely, and state what knowledge, information, and belief that you have concerning the unanswered portion of each such interrogatory.

INTERROGATORIES

INTERROGATORY NO. 1:

State your date of birth.

INTERROGATORY NO. 2:

If you are under the age of eighteen (18) years, IDENTIFY your parents or legal guardian.

INTERROGATORY NO. 3:

IDENTIFY the owner of YOUR COMPUTER.

INTERROGATORY NO. 4:

IDENTIFY all PERSONS who utilized YOUR COMPUTER during the last two years.

INTERROGATORY NO. 5:

IDENTIFY all PERSONS who utilized YOUR COMPUTER on November 18, 2003.

INTERROGATORY NO. 6:

IDENTIFY all PERSONS who downloaded an ONLINE MEDIA DISTRIBUTION SYSTEM on YOUR COMPUTER during the last two years.

INTERROGATORY NO. 7:

IDENTIFY all PERSONS who utilized an ONLINE MEDIA DISTRIBUTION SYSTEM on YOUR COMPUTER during the last two years, including but not limited to any PERSON who downloaded music to YOUR COMPUTER.

INTERROGATORY NO. 8:

IDENTIFY all PERSONS who utilized an ONLINE MEDIA DISTRIBUTION SYSTEM on YOUR COMPUTER on November 18, 2003.

INTERROGATORY NO. 9:

Identify, by title of recording and recording artist, all sound recordings that you have copied or downloaded onto YOUR COMPUTER using an ONLINE MEDIA DISTRIBUTION SYSTEM during the three years before the Complaint in this action was filed.

INTERROGATORY NO. 10:

Identify, by title of recording and recording artist, all sound recordings that you have MADE AVAILABLE from any of YOUR COMPUTERS using an ONLINE MEDIA DISTRIBUTION SYSTEM during the three years before the Complaint in this action was filed.

INTERROGATORY NO. 11:

For each of the sound recordings identified in your response to Interrogatory Nos. 9 or 10, identify the ONLINE MEDIA DISTRIBUTION SYSTEM used and the dates you used them.

INTERROGATORY NO. 12:

State all user or screen names you ever have used in connection with each ONLINE MEDIA DISTRIBUTION SYSTEM you utilized.

INTERROGATORY NO. 13:

IDENTIFY all PERSONS who have used the user screen name "ELTONJOHN@KaZaA" while connected to an ONLINE MEDIA DISTRIBUTION SYSTEM using YOUR COMPUTER.

INTERROGATORY NO. 14:

If you have recorded or burned onto CDs any sound recordings that you have downloaded using an ONLINE MEDIA DISTRIBUTION SYSTEM, identify, by title of recording and recording artist, each such sound recording, grouping the sound recordings by the CD onto which they were burned.

INTERROGATORY NO. 15:

Describe (by type of file, and, if applicable, title of song, artist, and where you got the file from) what is contained in each file identified in Exhibit B to the Complaint.

INTERROGATORY NO. 16:

List which files identified in Exhibit B to the Complaint were downloaded through an ONLINE MEDIA DISTRIBUTION SYSTEM.

INTERROGATORY NO. 17:

IDENTIFY who downloaded each file identified in Exhibit B to the Complaint.

INTERROGATORY NO. 18:

Identify, by title of recording and recording artist, all of the sound recordings contained in the files identified in Exhibit B to the Complaint which you deleted from YOUR COMPUTER after you received the Complaint in this action.

INTERROGATORY NO. 19:

Identify, by title of recording and recording artist, all of the sound recordings that you downloaded to YOUR COMPUTER using an ONLINE MEDIA DISTRIBUTION SYSTEM after you received the Complaint in this action.

INTERROGATORY NO. 20:

STATE THE BASIS for each Affirmative Defense alleged in your Answer.

PEPPER HAMILTON LLP



Vincent V. Carissimi (#42227)

Barbara L. Delaney (#86160)

Nathan W. Dean (#91104)

3000 Two Logan Square

Eighteenth & Arch Streets

Philadelphia, PA 19103-2799

(215) 981-4000

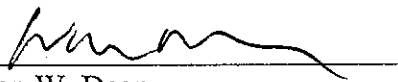
Dated: January 4, 2005

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Nathan W. Dean, hereby certify that on January 4, 2005, I caused a true and correct copy of the foregoing Plaintiffs' Interrogatories Directed to Defendant to be served by depositing the same in the United States Mail, First Class, postage prepaid, addressed to:

Ms. Theresa DePietro
1121 Folsom Avenue
Prospect Park, PA 19076



Nathan W. Dean

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MOTOWN RECORD COMPANY, L.P., a	:	
California limited partnership; CAPITOL	:	
RECORDS, INC., a Delaware corporation;	:	
ATLANTIC RECORDING	:	CIVIL ACTION
CORPORATION, a Delaware corporation;	:	
UMG RECORDING, INC., a Delaware	:	NO. 04-CV-2246
corporation; WARNER BROS. RECORDS	:	
INC., a Delaware corporation; and SONY	:	
MUSIC ENTERTAINMENT INC., a	:	
Delaware corporation,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
THERESA DePIETRO,	:	
	:	
Defendant.	:	

PLAINTIFFS' REQUESTS FOR ADMISSION DIRECTED TO DEFENDANT

Plaintiff Motown Record Company, L.P. requests that Defendant admit the truth of the following matters pursuant to Rule 36 of the Federal Rules of Civil Procedure. Under the provisions of Rule 36, you are required to respond to these Requests for Admission, in writing, within 30 days of service of these Requests. Your response must be signed as required by Rule 26(g)(2) of the Federal Rules of Civil Procedure. If you fail to fully respond to these Requests for Admission within the time allowed, the matters set forth in these Requests may be deemed admitted and conclusively established against you for purposes of this action.

DEFINITIONS AND INSTRUCTIONS

A. "PERSON(S)" means and includes any natural person or any business, legal or governmental entity or association.

B. "PLAINTIFFS' EXHIBIT A RECORDINGS" means the sound recordings listed on Exhibit A to the Complaint.

C. "PLAINTIFFS' SCHEDULE 1 RECORDINGS" means the sound recordings listed on "SCHEDULE 1" hereto, each of which are also listed on Exhibit B to the Complaint.

D. "ONLINE MEDIA DISTRIBUTION SYSTEM" means any Internet-based system including, but not limited to, Kazaa, Grokster, MusicCity, BearShare, Limewire, iMesh, FastTrack, and Gnutella, that enables users to copy sound recordings from, and/or distribute sound recordings to, other users of the system.

E. "MADE AVAILABLE" or "MAKE AVAILABLE" means storing a file or content on your computer hard drive in a manner such that the file or content may be accessed by members of the public and/or other users of an ONLINE MEDIA DISTRIBUTION SYSTEM including, but not limited to, by placing the file or content in a "share" folder associated with an ONLINE MEDIA DISTRIBUTION SYSTEM.

F. "YOUR COMPUTER" means all computers and computer components within your possession, custody, or control that had access to the Internet at any time during the preceding three years, including but not limited to, through your account with RCN Corporation.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that you subscribed to the Internet service provided by RCN Corporation, that connected YOUR COMPUTER to the Internet as of November 18, 2003.

REQUEST FOR ADMISSION NO. 2:

Admit that you owned YOUR COMPUTER as of November 18, 2003.

REQUEST FOR ADMISSION NO. 3:

Admit that you had the right and ability to supervise or control the use of YOUR COMPUTER as of November 18, 2003.

REQUEST FOR ADMISSION NO. 4:

Admit that you knew that YOUR COMPUTER had been used to download or MAKE AVAILABLE copyrighted sound recordings on or before November 18, 2003.

REQUEST FOR ADMISSION NO. 5:

Admit that you downloaded an ONLINE MEDIA DISTRIBUTION SYSTEM to YOUR COMPUTER.

REQUEST FOR ADMISSION NO. 6:

Admit that an ONLINE MEDIA DISTRIBUTION SYSTEM was downloaded to YOUR COMPUTER.

REQUEST FOR ADMISSION NO. 7:

Admit that you have used the user screen name "ELTONJOHN@KaZaA" while connected to an ONLINE MEDIA DISTRIBUTION SYSTEM.

REQUEST FOR ADMISSION NO. 8:

Admit that Exhibit B to the Complaint is a true and correct copy of your share folder as it currently exists or as it existed at any point in the past three years.

REQUEST FOR ADMISSION NO. 9:

Admit that Exhibit B to the Complaint accurately lists material you have MADE AVAILABLE via an ONLINE MEDIA DISTRIBUTION SYSTEM within the past three years.

REQUEST FOR ADMISSION NO. 10:

Admit that each of the file names listed on Exhibit B to the Complaint accurately depicts the artist and title of the sound recordings actually contained within those files as they reside or resided on YOUR COMPUTER.

REQUEST FOR ADMISSION NO. 11:

Admit that you downloaded each of PLAINTIFFS' EXHIBIT A RECORDINGS onto YOUR COMPUTER using an ONLINE MEDIA DISTRIBUTION SYSTEM.

REQUEST FOR ADMISSION NO. 12:

Admit that when you downloaded each of PLAINTIFFS' EXHIBIT A RECORDINGS onto YOUR COMPUTER, you knew that downloading such sound recordings was illegal.

REQUEST FOR ADMISSION NO. 13:

Admit that each Plaintiff listed on Exhibit A attached to the Complaint in this action as owning a copyright in one or more of PLAINTIFFS' EXHIBIT A RECORDINGS, does own or control exclusive rights to the copyright in each such sound recording next to which the Plaintiff is listed.

REQUEST FOR ADMISSION NO. 14:

Admit that each Plaintiff listed on Exhibit A attached to the Complaint as owning a copyright in one or more of PLAINTIFFS' EXHIBIT A RECORDINGS, registered the copyright in each such sound recording next to which the Plaintiff is listed prior to the first date in which you downloaded or MADE AVAILABLE each such sound recording.

REQUEST FOR ADMISSION NO. 15:

Admit that none of Plaintiffs ever has authorized you to copy or download any of PLAINTIFFS' EXHIBIT A RECORDINGS onto a computer hard drive.

REQUEST FOR ADMISSION NO. 16:

Admit that on or before the date of the filing of the Complaint in this action you MADE AVAILABLE PLAINTIFFS' EXHIBIT A RECORDINGS via an ONLINE MEDIA DISTRIBUTION SYSTEM.

REQUEST FOR ADMISSION NO. 17:

Admit that none of Plaintiffs ever has authorized you to MAKE AVAILABLE PLAINTIFFS' EXHIBIT A RECORDINGS to be downloaded or copied onto the computer hard drive of any other PERSON.

REQUEST FOR ADMISSION NO. 18:

Admit that after you received the Complaint in this action, you deleted some or all of PLAINTIFFS' EXHIBIT A RECORDINGS from YOUR COMPUTER.

REQUEST FOR ADMISSION NO. 19:

Admit that you downloaded each of PLAINTIFFS' SCHEDULE 1 RECORDINGS onto YOUR COMPUTER using an ONLINE MEDIA DISTRIBUTION SYSTEM.

REQUEST FOR ADMISSION NO. 20:

Admit that when you downloaded each of PLAINTIFFS' SCHEDULE 1 RECORDINGS onto YOUR COMPUTER, you knew that downloading such sound recordings was illegal.

REQUEST FOR ADMISSION NO. 21:

Admit that each Plaintiff listed on SCHEDULE 1 as owning a copyright in one or more of PLAINTIFFS' SCHEDULE 1 RECORDINGS, does own or control exclusive rights to the copyright in each such sound recording next to which the Plaintiff is listed.

REQUEST FOR ADMISSION NO. 22:

Admit that each Plaintiff listed on SCHEDULE 1 as owning a copyright in one or more of PLAINTIFFS' SCHEDULE 1 RECORDINGS, registered the copyright in each such sound recording next to which the Plaintiff is listed prior to the first date in which you downloaded or MADE AVAILABLE each such sound recording.

REQUEST FOR ADMISSION NO. 23:

Admit that none of Plaintiffs ever has authorized you to copy or download any of PLAINTIFFS' SCHEDULE 1 RECORDINGS onto a computer hard drive.

REQUEST FOR ADMISSION NO. 24:

Admit that on or before the date of the filing of the Complaint in this action you MADE AVAILABLE PLAINTIFFS' SCHEDULE 1 RECORDINGS via an ONLINE MEDIA DISTRIBUTION SYSTEM.

REQUEST FOR ADMISSION NO. 25:

Admit that none of Plaintiffs ever has authorized you to MAKE AVAILABLE PLAINTIFFS' SCHEDULE 1 RECORDINGS to be downloaded or copied onto the computer hard drive of any other PERSON.

REQUEST FOR ADMISSION NO. 26:

Admit that after you received the Complaint in this action, you deleted some or all of PLAINTIFFS' SCHEDULE 1 RECORDINGS from YOUR COMPUTER.

REQUEST FOR ADMISSION NO. 27:

Admit that after you received the Complaint in this action, you continued to download sound recordings to YOUR COMPUTER using an ONLINE MEDIA DISTRIBUTION SYSTEM.

REQUEST FOR ADMISSION NO. 28:

Admit that after you received the Complaint in this action, you continued to
MAKE AVAILABLE via an ONLINE MEDIA DISTRIBUTION SYSTEM at least some of
PLAINTIFFS' EXHIBIT A RECORDINGS or PLAINTIFFS' SCHEDULE 1 RECORDINGS.

PEPPER HAMILTON LLP



Vincent V. Carissimi (#42227)

Barbara L. Delaney (#86160)

Nathan W. Dean (#91104)

3000 Two Logan Square

Eighteenth & Arch Streets

Philadelphia, PA 19103-2799

(215) 981-4000

Dated: January 4, 2005

Attorneys for Plaintiffs

SCHEDULE 1
THERESA DEPIETRO

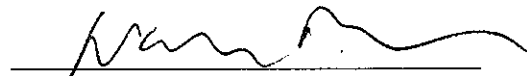
PLAINTIFF	ARTIST	SONG TITLE	ALBUM TITLE	SR
UMG Recordings, Inc.	Tom Petty	I Won't Back Down	Full Moon Fever	103-541
UMG Recordings, Inc.	Cher	Just Like Jesse James	Heart Of Stone	107-164
UMG Recordings, Inc.	Cher	After All (Love theme from Chances Are)	Heart Of Stone	107-164
Warner Bros. Records Inc.	Rod Stewart	Downtown Train	Downtown Train	114-412
Warner Bros. Records Inc.	Fleetwood Mac	Sara	Tusk	12-873
Capitol Records, Inc.	Bonnie Raitt	I Can't Make You Love Me	Luck of the Draw	133-193
Capitol Records, Inc.	Bonnie Raitt	Something to Talk About	Luck of the Draw	133-193
Sony BMG Music Entertainment	Mariah Carey	Hero	Music Box	178-631
Atlantic Recording Corporation	Matchbox 20	Girl Like That	Yourself or Someone Like You	227-755
Atlantic Recording Corporation	Matchbox 20	Push	Yourself or Someone Like You	227-755
UMG Recordings, Inc.	Shania Twain	Man! I Feel Like A Woman	Come On Over	243-502
UMG Recordings, Inc.	Shania Twain	That Don't Impress Me Much	Come On Over	243-502
Sony BMG Music Entertainment	Dixie Chicks	Goodbye Earl	Fly	275-086
Atlantic Recording Corporation	Rod Stewart	Don't Come Around Here	Human	300-512
Atlantic Recording Corporation	matchbox twenty	Stop	Mad Season	305-708
Atlantic Recording Corporation	matchbox twenty	Bent	Mad Season	305-708
Capitol Records, Inc.	Billy Idol	Dancing With Myself	Billy Idol	39-673
Capitol Records, Inc.	Bob Seger	Roll Me Away	Distance	43-102
Motown Record Company, L.P.	Lionel Richie	All Night Long (All Night)	Can't Slow Down	49-235
UMG Recordings, Inc.	Tom Petty	American Girl	Long After Dark	50-037
Warner Bros. Records Inc.	A-Ha	Take On Me	Hunting High and Low	63-603
UMG Recordings, Inc.	The Police	Roxanne	Outlandos D'Amour	6-942
UMG Recordings, Inc.	Bon Jovi	You Give Love a Bad Name	Slippery When Wet	71-794

PLAINTIFF	ARTIST	SONG TITLE	ALBUM TITLE	SR
UMG Recordings, Inc.	Cher	Half-Breed	Half Breed	79-301
UMG Recordings, Inc.	Cher	Gypsies, Tramps and Thieves	Half Breed	79-301
Atlantic Recording Corporation	INXS	Never Tear Us Apart	Kick	85-232
Warner Bros. Records Inc.	Rod Stewart	Forever Young	Out Of Order	92-430
Warner Bros. Records Inc.	Fleetwood Mac	Go Your Own Way	Rumours	N39857
Warner Bros. Records Inc.	Fleetwood Mac	You Make Loving Fun	Rumours	N39857
UMG Recordings, Inc.	Styx	Come Sail Away	The Grand Illusion	N43654
Motown Record Company, L.P.	Marvin Gaye	Let's Get It On	Let's Get It On	N8961

CERTIFICATE OF SERVICE

I, Nathan W. Dean, hereby certify that on January 4, 2005, I caused a true and correct copy of the foregoing Plaintiffs' Requests for Admission Directed to Defendant to be served by depositing the same in the United States Mail, First Class, postage prepaid, addressed to:

Ms. Theresa DePietro
1121 Folsom Avenue
Prospect Park, PA 19076



Nathan W. Dean

EXHIBIT 3

C. “PLAINTIFFS’ RECORDINGS” means the sound recordings listed on Exhibit A attached to the Complaint in this action.

D. The term “DOCUMENTS” has the same meaning and scope as that term has in Federal Rule of Civil Procedure 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

E. “ONLINE MEDIA DISTRIBUTION SYSTEM” means any Internet-based system including, but not limited to, Kazaa, Grokster, MusicCity, BearShare, Limewire, iMesh, FastTrack, and Gnutella that enables users to copy sound recordings from, and/or distribute sound recordings to, other users of the system.

F. “MADE AVAILABLE” or “MAKE AVAILABLE” means storing a file or content on your computer hard drive in a manner such that the file or content may be accessed by members of the public and/or other users of an ONLINE MEDIA DISTRIBUTION SYSTEM including, but not limited to, by placing the file or content in a “share” folder associated with an ONLINE MEDIA DISTRIBUTION SYSTEM.

G. “CONCERNING” means relating to, referring to, describing, evidencing, or constituting.

H. You must produce documents as they are usually kept, or organize and label the documents you produce to correspond with the categories enumerated below. See Fed. R. Civ. P. 34(b).

I. If any responsive document has been withheld because of a claim of privilege or work-product, you are required to produce a log stating the following information for each such document:

1. The date appearing on the document, or, if no date appears, the date upon which it was prepared;

2. Any identifying numbers or symbols;

3. The identity of each person who participated in the creation of the document;

4. The general subject matter of the document;

5. The number of pages of the document;

6. The identity of each person to whom the document is addressed, if any, and the identity of each person to whom the original or a copy of the document was sent;

7. The identity of each person who presently has possession, custody, or control of the document or any copy thereof;

8. The location of any file or files where the document or any draft or copy thereof normally or presently is kept;

9. The general nature or description of the document (e.g., letter, memorandum, handwritten notes, minutes, etc.);

10. The reason or reasons for the objection with sufficient particularity to allow the Court to adjudicate the merits of such objection, and the identity of the persons who have knowledge of the factual bases, if any, on which the privilege or other objection is asserted.

J. If any responsive document has been discarded, destroyed, or deleted you are required to produce a log stating, for each such document, the following information:

1. The date appearing on the document, or, if no date appears, the date upon which it was prepared;

2. Any identifying numbers or symbols;

3. The identity of each person who participated in the creation of the document;
4. The general subject matter of the document;
5. The number of pages of the document;
6. The identity of each person to whom the document was addressed, if any, and the identity of each person to whom the original or a copy of the document was sent;
7. The identity of each person whoever had possession, custody, or control of the document or any copy thereof;
8. The location of any file or files where the document or any draft or copy thereof normally was kept;
9. The general nature or description of the document (e.g., letter, memorandum, handwritten notes, minutes, etc.);
10. The circumstances surrounding the loss or destruction of the document.

DOCUMENTS TO BE PRODUCED

1. All DOCUMENTS CONCERNING any registration by you as a user of any ONLINE MEDIA DISTRIBUTION SYSTEM.
2. All sound recordings that are stored on the hard drive of any of YOUR COMPUTERS that you copied or downloaded using an ONLINE MEDIA DISTRIBUTION SYSTEM within three years before the Complaint in this action was filed.
3. All sound recordings stored on the hard drive of any of YOUR COMPUTERS that you ever MADE AVAILABLE via an ONLINE MEDIA DISTRIBUTION SYSTEM within three years before the Complaint in this action was filed.

4. All DOCUMENTS CONCERNING any sound recordings that you have MADE AVAILABLE via an ONLINE MEDIA DISTRIBUTION SYSTEM from any of YOUR COMPUTERS within three years before the Complaint in this action was filed.

5. All DOCUMENTS CONCERNING any sound recording that you copied or downloaded from other users of an ONLINE MEDIA DISTRIBUTION SYSTEM within three years before the Complaint in this action was filed.

6. A complete print-out of your screen shots depicting any publicly accessible folder, on any of YOUR COMPUTERS listing all sound recordings currently stored in those folders.

7. All DOCUMENTS CONCERNING any notices received by you from any Internet Service Provider CONCERNING copyrighted materials.

8. All DOCUMENTS CONCERNING communications or correspondence between you and any ONLINE MEDIA DISTRIBUTION SYSTEM, including, without limitation, e-mail messages, messages posted on on-line bulletin boards or in chat rooms, and real-time internet messaging messages.

9. All DOCUMENTS CONCERNING communications between you and anyone else CONCERNING any ONLINE MEDIA DISTRIBUTION SYSTEM or the "sharing," "trading," or downloading of digital music files, including, without limitation, e-mail messages, messages posted at on-line bulletin boards or in chat rooms, and real-time internet messaging messages.

10. All DOCUMENTS CONCERNING this lawsuit or any allegations contained therein, with the exception of documents filed with the Court.

11. All DOCUMENTS supporting the Affirmative Defenses alleged in your Answer.

12. All DOCUMENTS CONCERNING all CDs that you have recorded or burned from any sound recording that you downloaded using an ONLINE MEDIA DISTRIBUTION SYSTEM, including without limitation the CDs themselves and all lists of the sound recordings that are included on the CDs.

13. An electronic copy of each of the files identified in Exhibit B to the Complaint.

14. An electronic copy of each file currently contained in any share folder accessible through any ONLINE MEDIA DISTRIBUTION SYSTEM.

15. An electronic copy of the entire share folder utilized or created in connection with any ONLINE MEDIA DISTRIBUTION SYSTEM.

16. An electronic copy of the "registry" contained in (1) c:\windows\system.dat and (2) c:\windows\user.dat.

17. A copy of the "screenshot" of YOUR COMPUTER's Windows Desktop. For purposes of the request, please follow these instructions:

- A. Start up your computer and before running any program press the "Print Screen" button on your keyboard.
- B. Click the "Start" button and select "Paint" from the "Accessories" menu.
- C. Select "Paste" under the "Edit" menu in "Paint."
- D. Under the "File" menu select "Save" and save the file as "desktop_screenshot.bmp."
- E. Close the "Paint" program.
- F. Click the "Start" button and press the "Print Screen" button while the "Start Menu" is open.
- G. Click the "Start" button and select "Paint" from the "Accessories" menu.
- H. Select "Paste" under the "Edit" menu in "Paint."
- I. Under the "File" menu select "Save" and save the file as "start_menu_screenshot.bmp."

- J. Close the "Paint" program.
- K. Click the "Start" button and select "All Programs" then press the "Print Screen" button while the "All Programs Menu" is open.
- L. Click the "Start" button and select "Paint" from the "Accessories" menu.
- M. Select "Paste" under the "Edit" menu in "Paint".

Include the files "desktop_screenshot.bmp", "start_menu_screenshot.bmp" and "all_programs_menu_screenshot.bmp" in the backup returned to us.

PEPPER HAMILTON LLP



Vincent V. Carissimi (#42227)
Barbara L. Delaney (#86160)
Nathan W. Dean (#91104)
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103-2799
(215) 981-4000

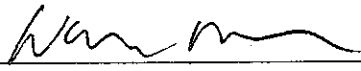
Dated: January 4, 2005

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Nathan W. Dean, hereby certify that on January 4, 2005, I caused a true and correct copy of the foregoing Plaintiffs' First Request for Production of Documents Directed to Defendant to be served by depositing the same in the United States Mail, First Class, postage prepaid, addressed to:

Ms. Theresa DePietro
1121 Folsom Avenue
Prospect Park, PA 19076



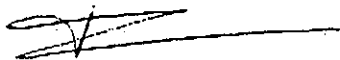
Nathan W. Dean

EXHIBIT 4

**In The United States District Court
For The Eastern District Of Pennsylvania**

Motown Record Company, L.P., Capitol Records	:	Civil Action No.04-2246
Inc., Atlantic Recording Corporation, UMG	:	
Recordings, Inc., Warner Bros. Records And	:	
Sony Music Entertainment INC.	:	
	:	
Plaintiffs	:	
	:	
V.	:	DEFENDANT DEMANDS
	:	A TRIAL BY JURY
Theresa DePietro	:	
	:	
Defendant	:	
	:	

Defendant Theresa DePietro denies the Plaintiffs' request for answers to their interrogatories.



Dated: February 7, 2005

EXHIBIT 5

**In The United States District Court
For The Eastern District Of Pennsylvania**

Motown Record Company, L.P., Capitol Records
Inc., Atlantic Recording Corporation, UMG
Recordings, Inc., Warner Bros. Records And
Sony Music Entertainment INC.

Plaintiffs

V.

Theresa DePietro

Defendant

Civil Action No.04-2246

**DEFENDANT DEMANDS
A TRIAL BY JURY**

Defendant Theresa DePietro denies Plaintiffs' request for admission.


Dated: February 7, 2005

EXHIBIT 6

**In The United States District Court
For The Eastern District Of Pennsylvania**

Motown Record Company, L.P., Capitol Records	:	Civil Action No.04-2246
Inc., Atlantic Recording Corporation, UMG	:	
Recordings, Inc., Warner Bros. Records And	:	
Sony Music Entertainment INC.	:	
	:	
Plaintiffs	:	
	:	
V.	:	DEFENDANT DEMANDS
	:	A TRIAL BY JURY
Theresa DePietro	:	
	:	
Defendant	:	
	:	

Defendant Theresa DePietro denies Plaintiffs' request for production of documents.

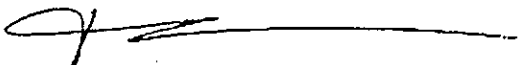

Dated: February 7, 2005

EXHIBIT 7

Pepper Hamilton LLP
Attorneys at Law

3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
215.981.4000
Fax 215.981.4750

Nathan W. Dean
direct dial: 215 981 4121
deann@pepperlaw.com

February 16, 2005

Via First Class Mail

Ms. Theresa DePietro
1121 Folsom Avenue
Prospect Park, PA 19076

Re: Motown Record Company, et al. v. Theresa DePietro
E.D. PA Case No. 04-2246

Dear Ms. DePietro:

As you know, we represent the plaintiffs in the above-referenced matter. We are writing to address the inadequacy of your responses to Plaintiffs' Requests for Admission Directed to Defendant, Plaintiffs' First Request for Production of Documents Directed to Defendant, and Plaintiffs' Interrogatories Directed to Defendant. Please give me a call at 215-981-4121 so that we can discuss supplemental responses on your part. If we are unable to resolve this issue by Wednesday of next week (2/23) we will seek the Court's assistance in compelling you to respond as we have a short period of time in which to conduct discovery.

I look forward to your call and your cooperation.

Sincerely,



Nathan W. Dean

NWD:kh
Enclosures

Pepper Hamilton LLP
Attorneys at Law

Ms. Theresa DePietro
February 16, 2005
Page 2

bc: David Steinberg, Esquire
Yvette Molinaro, Esquire
Eric J. German, Esquire
Vincent V. Carissimi, Esquire
Barbara L. Delaney, Esquire
Paula A. Wright
(All via electronic mail)

EXHIBIT 8

**In The United States District Court
For The Eastern District Of Pennsylvania**

Motown Record Company, L.P., Capitol Records	:	Civil Action No.04-2246
Inc., Atlantic Recording Corporation, UMG	:	
Recordings, Inc., Warner Bros. Records And	:	
Sony Music Entertainment INC.	:	
	:	
Plaintiffs	:	
	:	
V.	:	DEFENDANT DEMANDS
	:	A TRIAL BY JURY
Theresa DePietro	:	
	:	
Defendant	:	
<hr/>		

Defendant Theresa DePietro is exercising her Fifth Amendment right by refusing to
either admit or deny Plaintiff's requests for admission.

Dated: April 11, 2005

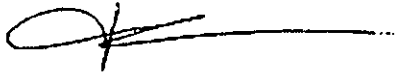


EXHIBIT 9

**In The United States District Court
For The Eastern District Of Pennsylvania**

Motown Record Company, L.P., Capitol Records	:	Civil Action No.04-2246
Inc., Atlantic Recording Corporation, UMG	:	
Recordings, Inc., Warner Bros. Records And	:	
Sony Music Entertainment INC.	:	
	:	
Plaintiffs	:	
	:	
V.	:	DEFENDANT DEMANDS
	:	A TRIAL BY JURY
Theresa DePietro	:	
	:	
Defendant	:	
	:	

Defendant Theresa DePietro is exercising her Fifth Amendment right by refusing to answer Plaintiff's Interrogatories.

Dated: April 11, 2005

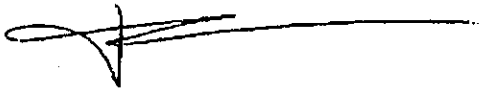


EXHIBIT 10

In The United States District Court
For The Eastern District Of Pennsylvania

Motown Record Company, L.P., Capitol Records	:	Civil Action No.04-2246
Inc., Atlantic Recording Corporation, UMG	:	
Recordings, Inc., Warner Bros. Records And	:	
Sony Music Entertainment INC.	:	
	:	
Plaintiffs	:	
	:	
V.	:	DEFENDANT DEMANDS
	:	A TRIAL BY JURY
Theresa DePietro	:	
	:	
Defendant	:	
	:	

Other than the documents that have been sent to the Defendant by the Plaintiff or the
Plaintiff's representatives, there are no existing documents that the
Plaintiffs are requesting.

Dated: April 11, 2005

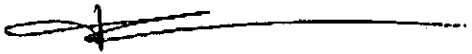


EXHIBIT 11

planning

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA


MOTOWN RECORD COMPANY, L.P., a	:	
California limited partnership; CAPITOL	:	
RECORDS, INC., a Delaware corporation;	:	
ATLANTIC RECORDING	:	CIVIL ACTION
CORPORATION, a Delaware corporation;	:	
UMG RECORDING, INC., a Delaware	:	NO. 04-CV-2246
corporation; WARNER BROS. RECORDS	:	
INC., a Delaware corporation; and SONY	:	
MUSIC ENTERTAINMENT INC., a	:	
Delaware corporation,	:	
	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
	:	
THERESA DePIETRO,	:	
	:	
	:	
Defendant.	:	

NOTICE OF DEPOSITION

TO: Ms. Theresa DePietro
1121 Folsom Avenue
Prospect Park, PA 19076

PLEASE TAKE NOTICE that plaintiffs, by their attorneys, will take the deposition upon oral examination before an officer duly authorized by law to administer oaths of Theresa DePietro on Thursday, April 7, 2005, commencing at 10:00 a.m., at the offices of Pepper Hamilton LLP, 3000 Two Logan Square, Philadelphia, PA 19103, by stenographic

means. The deposition may be used for all purposes allowed by the Federal Rules of Civil Procedure and Federal Rules of Evidence.



Vincent V. Carissimi (#42227)
Barbara L. Delaney (#86160)
Nathan W. Dean (#91104)
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103-2799
(215) 981-4000


Dated: March 22, 2005

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Nathan W. Dean, certify that on this 22nd day of March, 2005, I caused to be served a copy of the foregoing Notice of Deposition by first class mail, postage prepaid, upon the following:

Ms. Theresa DePietro
1121 Folsom Avenue
Prospect Park, PA 19076



Nathan W. Dean

EXHIBIT 12

ORAL DEPOSITION OF THERESA DePIETRO, 5/4/05

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA
3
4
5

6 MOTOWN RECORD COMPANY,
L.P., et al,

7
Plaintiffs

8
V

NO. 04-CV-2246

9 THERESA DePIETRO,
10 Defendant
11
12
13

14 Oral deposition of THERESA
15 DePIETRO, taken at the law offices of
16 Pepper Hamilton, 18th and Arch
17 Street, Philadelphia, Pennsylvania,
18 on Wednesday, May 4, 2005, commencing
19 at approximately 9:20 a.m., before
20 Maureen E. Broderick, a Registered
21 Professional Reporter, pursuant to
22 notice.
23
24

ORAL DEPOSITION OF THERESA DePIETRO, 5/4/05

Page 2

1 APPEARANCES
 2 TIMOTHY E. CONGROVE, ESQUIRE
 Tcongrove@shb.com
 3 Shook, Hardy & Bacon, L.L.P.
 2555 Grand Boulevard
 4 Kansas City, Missouri 64108-2613
 816.474.6550
 5 Counsel for Plaintiffs
 6

7
 8 EXAMINATION INDEX
 9 THERESA DePIETRO
 BY MR. CONGROVE 3

10
 11
 12 EXHIBIT INDEX
 13 MARKED

14 DePietro
 1 Notice of Deposition 4
 15
 2 Court's order 4
 16
 3 Complaint 10
 17
 18
 19
 20
 21
 22
 23
 24

Page 4

1 Warner Brothers Records, Inc., and
 2 Sony Music Entertainment.

3 This action has been filed
 4 in the United States District Court
 5 for the Eastern District of
 6 Pennsylvania against you, Ms.
 7 DePietro.

8 MR. CONGROVE: We'll mark
 9 this as 1.

10 (Exhibits DePietro-1 and
 11 DePietro-2 were marked for
 12 identification.)

13 BY MR. CONGROVE:

14 Q. Ms. DePietro, I've marked
 15 as Exhibit 1 a notice of deposition
 16 for this deposition today. It's for
 17 purposes of the record. You're free
 18 to see it if you want to, but you
 19 should have received this in the
 20 mail.

21 A. Yes.

22 Q. For purposes of the record,
 23 I've marked as DePietro Exhibit No.
 24 2, the Court's order admitting me to

Page 3

1 THERESA DePIETRO, having
 2 been duly sworn, was examined and
 3 testified as follows:

4 (It is agreed by counsel
 5 that reading and signing of the
 6 transcript are waived, and that all
 7 objections, except as to the form of
 8 the question, are reserved until the
 9 time of trial.)

10 EXAMINATION

11 BY MR. CONGROVE:

12 Q. Good morning, Ms. DePietro.
 13 My name is Tim Congrove. I'm with
 14 the law firm Shook, Hardy & Bacon
 15 from Kansas City. And I represent
 16 the plaintiffs in the action that was
 17 filed against you.

18 A. Who is the plaintiffs?

19 (Interruption.)

20 BY MR. CONGROVE:

21 Q. I represent the plaintiffs
 22 in this action, Motown Records,
 23 Capital Records, Atlantic Recording
 24 Corporation, UMG Recording, Inc.,

Page 5

1 appear pro hac vice on behalf of the
 2 plaintiffs in this action. Okay?

3 A. Yes.

4 Q. Ms. DePietro, would you
 5 please for purposes of the record
 6 state your full name.

7 A. Theresa DePietro.

8 Q. Have you ever had your
 9 deposition taken before in any other
 10 matter?

11 A. No.

12 Q. Have you ever testified in
 13 court or any other type of judicial
 14 proceeding?

15 A. Yes.

16 Q. Could you tell me about
 17 those prior occasions when you have
 18 testified in court?

19 A. I was a character witness.

20 Q. Was that in a criminal or
 21 civil proceeding?

22 A. Criminal.

23 Q. Approximately when did you
 24 give that testimony?

ORAL DEPOSITION OF THERESA DePIETRO, 5/4/05

Page 6

1 A. Two years ago.
 2 Q. Were you a character
 3 witness for a defendant?
 4 A. Yes.
 5 Q. Was it a family member?
 6 A. No.
 7 Q. Was it a friend?
 8 A. An acquaintance.
 9 Q. What was the nature of the
 10 criminal proceeding that you were
 11 involved with? Let me rephrase that
 12 question.
 13 Do you know what charges
 14 were brought against your
 15 acquaintance that you were testifying
 16 on her behalf for?
 17 A. I don't think that has
 18 anything to do with this.
 19 Q. I'm not going to ask for a
 20 name, I just want to know what the
 21 nature of the charges were.
 22 A. There's no reason for you
 23 to know that. I mean...
 24 Q. Where was that testimony

Page 8

1 Q. Ms. DePietro, the court
 2 reporter is going to be taking down
 3 everything that is said today. Okay?
 4 A. Correct.
 5 Q. She can only transcribe one
 6 person's voice at a time. So I'm
 7 going to go over a few ground rules
 8 so that it makes her life easier.
 9 Okay? All right?
 10 A. Yes.
 11 Q. Since she's transcribing
 12 what my questions and your response
 13 is, it's important that we don't talk
 14 over each other. Okay?
 15 So please wait until I
 16 finish with my question before you
 17 give your response. Okay?
 18 A. Yes.
 19 Q. I will also wait until you
 20 finish your answer before I start my
 21 next question. Okay?
 22 A. Yes.
 23 Q. If you do not understand a
 24 question, please let me know and I'll

Page 7

1 given? Was it here in Pennsylvania
 2 or was it elsewhere?
 3 A. Pennsylvania.
 4 Q. Was it in state or federal
 5 court?
 6 A. I don't remember. What
 7 relevance does this have on anything?
 8 Q. I can ask the questions at
 9 depositions.
 10 A. Okay.
 11 Q. I want to know what the
 12 nature of the proceedings were.
 13 Let me just ask you this
 14 question: Did it have anything to do
 15 with copyright infringement?
 16 A. No. No. No.
 17 Q. Now, you understand that
 18 you are testifying under the penalty
 19 of perjury today?
 20 A. Yes.
 21 Q. Just as you would if you
 22 were testifying before a judge in a
 23 court of law?
 24 A. Yes.

Page 9

1 do my best to rephrase it. Okay?
 2 A. Sure.
 3 Q. It's also important during
 4 these depositions that you give
 5 verbal responses. She can't record
 6 nods of the head, shrugs of the
 7 shoulders, et cetera. Okay?
 8 A. Okay.
 9 Q. You're doing great, by the
 10 way.
 11 THE WITNESS: Off the
 12 record.
 13 THE COURT REPORTER: Off
 14 the record, Counsel?
 15 MR. CONGROVE: Yes.
 16 (Discussion off the
 17 record.)
 18 MR. CONGROVE: Back on the
 19 record.
 20 BY MR. CONGROVE:
 21 Q. By the way, I mean, in
 22 terms of going on and off the record,
 23 ma'am, if you want to ask to do that,
 24 that's fine with me. But before you

ORAL DEPOSITION OF THERESA DePIETRO, 5/4/05

Page 10

1 start to say anything since I am the
2 one who has noticed the deposition,
3 please allow me to consent to that
4 before we go off the record. Okay?

5 A. Gotcha.

6 Q. Are you represented by
7 counsel here today, ma'am?

8 A. No.

9 Q. Are you under the influence
10 of any drugs, alcohol, or medication
11 that would affect your memory or
12 would affect your ability to provide
13 truthful and complete answers?

14 A. No.

15 Q. Can you think of any reason
16 why you cannot give your best
17 testimony today?

18 A. No.

19 (Exhibit DePietro-3 was
20 marked for identification.)

21 BY MR. CONGROVE:

22 Q. Ms. DePietro, I'm going to
23 hand you what we've marked as
24 DePietro Exhibit No. 3. For the

Page 12

1 time?

2 A. Every single page?

3 Q. Did you read it?

4 A. Not all of it, most of it.
5 Some of it.

6 Q. You looked through the
7 Complaint; is that right?

8 A. Yes.

9 Q. If you'll turn with me to
10 Page 6 of the Complaint, the sixth
11 page of the document that we were
12 looking at, this one is numbered,
13 you'll see the Complaint was filed on
14 May 24, 2004. Do you see that? Do
15 you see the date there?

16 A. Is that the original date?

17 Q. That's the date when this
18 Complaint was filed against you.

19 A. Because I received
20 something prior to this.

21 Q. We'll cover that later.

22 This is the Complaint that
23 actually -- the actual lawsuit was
24 filed on May 24, '04. Do you see

Page 11

1 record, this is the Complaint that
2 was filed in this action against you.
3 Would you flip with me to the seventh
4 page, please, ma'am.

5 A. (Witness complies.)

6 Q. This is the page I'm
7 looking at.

8 A. Are they numbered?

9 Q. No.

10 Ma'am, this is the
11 Complaint that was filed against you
12 in this case. You have turned to the
13 page which is labeled Complaint and
14 you can see the caption there with
15 your name. Do you see that, ma'am?

16 A. Yes.

17 Q. The pages before here are
18 the civil cover sheet and other court
19 documents that have to be filed with
20 the Complaint.

21 Do you recall receiving the
22 Complaint in this matter, ma'am?

23 A. Yes.

24 Q. Did you read it at the

Page 13

1 that?

2 A. Okay.

3 Q. When you received that
4 Complaint, what did you do?

5 A. I briefed through it.

6 Q. Did you try to contact an
7 attorney?

8 A. Yes.

9 Q. Did you contact one
10 particular attorney or did you
11 contact a number of attorneys?

12 A. I spoke with a few.

13 Q. Are the attorneys that you
14 contacted people that you're
15 personally acquainted with or are
16 these individuals that you found in
17 the telephone book?

18 A. Neither.

19 Q. How did you find the
20 attorneys that you tried to contact?

21 A. Where did I get their names
22 at? Two, somebody called for me and
23 some I found on my own, but not in
24 the phone book.

ORAL DEPOSITION OF THERESA DePIETRO, 5/4/05

Page 14

1 Q. How did you find them on
2 your own?
3 A. Through going to -- I got
4 information from someone on people
5 that handled this type of stuff, so
6 through friends.
7 Q. Who was that someone who
8 gave the information about lawyers
9 who handle these types of matters?
10 A. A friend.
11 Q. What is his or her name?
12 A. Arlene.
13 Q. What is Arlene's last name?
14 A. I don't know.
15 Q. How do you know Arlene?
16 A. She is a friend of a
17 friend.
18 Q. What is the name of your
19 friend who is friends with Arlene?
20 A. Merrie.
21 Q. What is Merrie's last name?
22 A. DePietro.
23 Q. Are you related to Merrie
24 DePietro?

Page 16

1 same thing.
2 Q. Where does John DePietro
3 live?
4 A. Highland Avenue in Morton.
5 I don't know the address.
6 Q. Now, you are not being
7 represented in this lawsuit, correct?
8 A. Correct.
9 Q. When I say not represented,
10 you're not being represented by an
11 attorney in this lawsuit, correct?
12 A. Correct.
13 Q. Are you in contact with any
14 attorneys who are advising you how
15 you should defend yourself?
16 A. I don't understand the
17 question.
18 Q. Are you receiving any
19 advice from an attorney as to how you
20 should defend yourself in this
21 lawsuit?
22 A. No.
23 Q. Have you -- let me back up.
24 Without telling me what

Page 15

1 A. Yes.
2 Q. How are you related to
3 Merrie?
4 A. Merrie is my sister-in-law.
5 Q. How do you spell her name?
6 A. D-e-P-I-E-T-R-O.
7 Q. How do you spell her first
8 name?
9 A. M-E-R-R-I-E.
10 MR. CONGROVE: Off the
11 record.
12 (Discussion off the
13 record.)
14 MR. CONGROVE: Back on the
15 record.
16 BY MR. CONGROVE:
17 Q. Who is Merrie married to?
18 Your brother?
19 A. My brother.
20 Q. What is your brother's
21 name?
22 A. Jack.
23 Q. Where does Jack live?
24 A. Actually it's John, but

Page 17

1 advice may have been given, have you
2 received any advice from an attorney
3 as to how you should defend yourself
4 in this lawsuit?
5 A. What's that?
6 Q. Without telling me what an
7 attorney has told you, have you
8 received any advice from an attorney
9 as to how you should defend yourself
10 in this lawsuit?
11 A. No.
12 Q. What is your middle
13 initial, Ms. DePietro?
14 A. M.
15 Q. What does M stand for?
16 A. Mary.
17 Q. What is your date of birth?
18 A. September 1, 1958.
19 Q. Are you a US citizen?
20 A. Yes.
21 Q. What is your maiden name?
22 I'm sorry.
23 Are you married?
24 A. No.

ORAL DEPOSITION OF THERESA DePIETRO, 5/4/05

Page 18

1 Q. Have you ever been married?
 2 A. No.
 3 Q. What is your Social
 4 Security number?
 5 A. I don't have it.
 6 Q. How about your driver's
 7 license number?
 8 A. I don't have that either.
 9 Q. Do you have a driver's
 10 license?
 11 A. Yes.
 12 Q. Did you drive here today?
 13 A. Yes.
 14 Q. What is your home address?
 15 A. 1121 Folsom Avenue,
 16 Prospect Park, Pennsylvania, First
 17 Floor.
 18 Q. What type of residence is
 19 that? Is that a single family home?
 20 A condominium? Apartment? How would
 21 you describe it?
 22 A. Where I live?
 23 Q. Yes.
 24 A. In an apartment.

Page 20

1 boyfriend?
 2 A. That's a good question.
 3 I'm kind of in the middle of
 4 splitting up. So, let's see, is he
 5 still my boyfriend?
 6 Q. What is the name of your
 7 boyfriend or maybe-soon-to-be former
 8 boyfriend?
 9 A. Nazareno.
 10 Q. How do you spell that?
 11 A. N-A-Z-A-R-E-N-O.
 12 Q. Is that his first or last
 13 name?
 14 A. That's his first name.
 15 Q. What is his last name?
 16 A. Fioravanti.
 17 Q. Can you spell that for us,
 18 please.
 19 A. F-I-O-R-A-V-A-N-T-I.
 20 Q. Are you currently living
 21 together?
 22 A. As of two hours ago.
 23 Q. Let me start over. Are you
 24 currently living together? When you

Page 19

1 Q. How long have you lived
 2 there?
 3 A. Five, six years, something
 4 like that.
 5 Q. Do you recall what year you
 6 moved to Folsom Avenue?
 7 A. No.
 8 Q. It's been at least five or
 9 six years?
 10 A. Around there.
 11 Q. I take it that you rent
 12 that residence?
 13 A. Mm-hmm.
 14 Q. That's one of the things
 15 about depositions, it's important for
 16 you to give yes, no type of responses
 17 as opposed to mm-hmms. She can't
 18 take those down. It's not really
 19 clear as to what that is.
 20 You're saying you do rent
 21 this apartment; is that right?
 22 A. Actually, my boyfriend's
 23 name is on the lease.
 24 Q. What is the name of your

Page 21

1 say "As of two hours ago," what do
 2 you mean by that?
 3 A. He's going to be moving
 4 out.
 5 Q. He is in the process of
 6 moving out; is that right?
 7 A. So he says.
 8 Q. How long have the two of
 9 you lived together?
 10 A. 13 years. It will be 13
 11 years in September, actually.
 12 Q. Have the two of you lived
 13 together at 1121 Folsom Avenue for
 14 the past five to six years?
 15 A. Yes.
 16 Q. Was there any point in time
 17 at which Mr. Fioravanti previously
 18 moved out?
 19 A. No.
 20 Q. So up until today, when he
 21 is in the process of moving out, he
 22 has continuously resided with you at
 23 1121 Folsom Avenue; is that correct?
 24 A. Yes.

ORAL DEPOSITION OF THERESA DePIETRO, 5/4/05

Page 22

1 Q. You don't have to give me
2 street addresses, but where did you
3 live before the 1121 Folsom Avenue
4 address? What suburbs or cities did
5 you live in?

6 A. Same one, Prospect Park.

7 Q. Had you always lived in
8 Prospect Park?

9 A. No.

10 Q. How long have you lived in
11 Prospect Park?

12 A. 14 years.

13 Q. I apologize if I've asked
14 this question before: Prior to your
15 relationship with Mr. Fioravanti,
16 were you ever previously married and
17 went by a different name?

18 A. No.

19 Q. Have you always gone by
20 Theresa DePietro?

21 A. Yes.

22 Q. Do you and Mr. Fioravanti
23 have any children?

24 A. No.

Page 24

1 A. I don't know.

2 Q. Have you ever seen

3 Michelle?

4 A. Yes.

5 Q. If you had to make a guess,
6 how old would you say Michelle is?

7 A. 32.

8 Q. She's never lived with you,
9 right?

10 A. Correct.

11 Q. Has she ever spent any
12 extended periods of time at your
13 apartment on Folsom Avenue?

14 A. No.

15 Q. How often does she visit?

16 A. Never.

17 Q. Has she ever visited you at
18 Folsom Avenue?

19 A. No.

20 Q. Other than Mr. Fioravanti,
21 does anybody else live with you at
22 the 1121 Folsom Avenue apartment?

23 A. No.

24 Q. Has anyone lived with you

Page 23

1 Q. Do you have any children
2 from prior relationships?

3 A. No.

4 Q. Does he have any children?

5 A. Yes.

6 Q. Do they live with you?

7 A. No.

8 Q. Have they ever lived with
9 you?

10 A. No.

11 (Witness crying.)

12 BY MR. CONGROVE:

13 Q. Ma'am, if you need to take
14 a break at any time, please let me
15 know and we can certainly take a
16 break.

17 A. No. We're going to wind
18 this up quick.

19 Q. So how many children does
20 Mr. Fioravanti have?

21 A. One.

22 Q. What is his child's name?

23 A. Michelle.

24 Q. How old is Michelle?

Page 25

1 and Mr. Fioravanti at the 1121 Folsom
2 Avenue apartment in the past five
3 years?

4 A. No.

5 Q. Have you had any long-term
6 houseguests who have stayed with you
7 at your apartment on Folsom Avenue?

8 A. No.

9 Q. I take it you don't have
10 any other roommates?

11 A. Correct.

12 Q. Does anyone other than you
13 and Mr. Fioravanti have access to
14 your home in terms of keys or so
15 forth?

16 A. Probably, yes.

17 Q. Can you tell me who those
18 people are?

19 A. I have a key that anyone
20 can have access to. I leave it kind
21 of somewhere.

22 Q. You don't have to tell me
23 where.

24 Who are the people that you

ORAL DEPOSITION OF THERESA DePIETRO, 5/4/05

Page 26

1 would allow to access your home with
2 the key that you leave available for
3 them?

4 A. Friends and family.

5 Q. You've told me about one
6 brother that you have. Do you have
7 any other siblings?

8 A. Yes.

9 Q. What are their names?

10 A. I'm not answering any more
11 questions. I refuse to answer on the
12 grounds it might incriminate me. I'm
13 taking my Fifth.

14 Q. You're going to assert the
15 Fifth --

16 A. For every question you've
17 got from now on out.

18 Q. Ma'am, obviously you're not
19 a lawyer. Can you explain to me your
20 understanding of the Fifth Amendment
21 and what it entitles you to object
22 to?

23 A. I'm done.

24 Q. Are you refusing to answer

Page 28

1 "Q. What led you to
2 conclude that you should assert the
3 Fifth Amendment in this case?"

4 MR. CONGROVE: Please note
5 for the record that this question has
6 been pending for over a minute and
7 Ms. DePietro has refused to respond
8 at all or even to make an objection.
9 BY MR. CONGROVE:

10 Q. Ms. DePietro, what leads
11 you to believe that it is proper to
12 assert the Fifth Amendment in this
13 case?

14 A. (No response.)

15 MR. CONGROVE: Please allow
16 the record to reflect that question,
17 that last question has been pending
18 for approximately one minute with no
19 response whatsoever from Ms.
20 DePietro.

21 BY MR. CONGROVE:

22 Q. Ms. DePietro, to your
23 knowledge, are you being criminally
24 investigated by the federal, state

Page 27

1 that question?

2 A. I refuse to answer the
3 questions. I'm taking my Fifth
4 Amendment.

5 Q. Ma'am, I'm going to have to
6 make a record of some of these
7 questions. Okay? If you're going to
8 assert the Fifth, that is obviously
9 your choice. I'm going to go ahead
10 and ask you some questions. All
11 right?

12 A. How long are you going to
13 take?

14 Q. I'm not sure.

15 What led you to conclude
16 that you should assert the Fifth
17 Amendment in this case?

18 A. (No response.)

19 Q. Ma'am, do we need to read
20 the question again?

21 MR. CONGROVE: Would you
22 read that last question back, please.

23 (The court reporter read
24 back the following:

Page 29

1 governments for the copyright
2 infringement, the acts of copyright
3 infringement alleged in this lawsuit?

4 A. (No response.)

5 MR. CONGROVE: Please let
6 the record reflect that the preceding
7 question has been pending for
8 approximately one minute with no
9 response whatsoever from Ms.
10 DePietro.

11 BY MR. CONGROVE:

12 Q. Ms. DePietro, are you aware
13 of anyone who has been criminally
14 prosecuted for infringing the
15 copyrights of the music companies
16 over the Internet?

17 A. (No response.)

18 MR. CONGROVE: Let the
19 record reflect that Ms. DePietro did
20 not respond to the preceding question
21 which has been pending for more than
22 a minute.

23 Let's go off the record.
24 (Brief recess.)

ORAL DEPOSITION OF THERESA DePIETRO, 5/4/05

Page 30

1 MR. CONGROVE: On the
2 record.

3 THE WITNESS: It was nice
4 meeting you.

5 BY MR. CONGROVE:

6 Q. Before you leave, Ms.
7 DePietro, we commenced this
8 deposition approximately 40 minutes
9 ago.

10 During a series of
11 background questions that I was
12 asking you, in particular a question
13 concerning other family members who
14 might have, as a prelude to finding
15 out who might have access to your
16 home and who might have access to
17 your computer, you asserted the Fifth
18 Amendment as an objection to that
19 question.

20 I was seeking that
21 background information in order to
22 determine whether or not others might
23 have access to your computer --

24 A. I don't mean to be rude. I

Page 32

1 a Fifth Amendment objection and
2 refused to answer any further
3 questions.

4 She continued to refuse to
5 answer questions concerning the basis
6 or her understanding of the grounds
7 for her Fifth Amendment objection and
8 privilege. She was completely
9 non-responsive, as the record will
10 reflect, and refused to answer any
11 questions.

12 She has prematurely
13 terminated the deposition. And
14 plaintiffs reserve rights to seek
15 attorney fees and expenses incurred
16 in connection with this prematurely
17 terminated deposition.

18 (Deposition adjourned at
19 10:14 a.m.)

20
21
22
23
24

Page 31

1 told you I'm leaving.

2 Q. Let me please make my
3 record, ma'am. I'm going to go and
4 continue to make this record, ma'am.
5 Okay? I would advise you not to
6 leave.

7 (Witness leaves.)

8 MR. CONGROVE: I'm going to
9 start over for purposes of the
10 record.

11 During the series of
12 questions that I was asking Ms.
13 DePietro about basic background, she
14 asserted the Fifth Amendment
15 objection. I was asking her
16 questions about others who might have
17 access to her home and, therefore,
18 access to the computer upon which the
19 infringing activity took place.

20 Ms. DePietro told me that
21 family members and friends had access
22 to her home. I asked for the names
23 of her family members.

24 At that point she asserted

EXHIBIT 13

Shook,
Hardy &
Bacon LLP
www.shb.com

July 11, 2005

Timothy E. Congrove

By Certified Mail No. 7160 3901 9848 3872 0310

Thresea DePietro
1121 Folsom Ave.
Prospect Park, PA 19076

2555 Grand Blvd.
Kansas City
Missouri 64108-2613
816.474.6550
816.559.2130 DD
816.421.2708 Fax
tcongrove@shb.com

Re: *Motown Records, et al. v. DePietro*
Case No. 2:04-CV-246, E.D. Pa.

Dear Ms. DePietro:

As you are aware, we represent the Plaintiffs in the above-referenced matter. We are writing to once again address the inadequacy of your responses to Plaintiffs' written discovery requests and your conduct in the May 4, 2005 deposition.

Your responses to both written and oral discovery are troublesome. First, the Court, following our earlier motion to compel, ordered you to respond to Plaintiffs' written discovery requests. Your responses, in which you assert the Fifth Amendment and deny that you possess certain information, are unbelievable. Second, you again asserted your Fifth Amendment rights and abruptly terminated your deposition without just cause.

Unless we can resolve these issues, Plaintiffs will again file a motion to compel and or for sanctions, including monetary penalties for the unwarranted termination of your deposition. The result of this hearing could have drastic consequences for you legally, as well as financially. We therefore hope you will contact us to discuss appropriate supplemental responses and/or resolution of this matter. If we do not hear from you by July 15, 2005, we will have no option but to file the appropriate pleadings.

We look forward to your cooperation

Sincerely,


Timothy E. Congrove


Geneva
Houston
Kansas City
London
Miami
Orange County
Overland Park
San Francisco
Tampa
Washington, D.C.

CERTIFICATE OF SERVICE

I, Howard M. Klein, Esquire, hereby certify that on this date I caused a true and correct copy of the foregoing Motion to Compel to be served upon defendant by first class mail, at the following address:

James Trojan
661 S. 5th Avenue, Lot 4
Royersford, PA 19468

Dated: July 19, 2005



Howard M. Klein